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December 23, 2009

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

RE: Docket No. R-1366
Regulation Z (Truth in Lending)

Dear Ms. Johnson:

This comment letter is submitted in response to proposed revisions to the closed-end mortgage credit provisions of Regulation Z, published in the August 26, 2009 Federal Register. I submit these comments in my personal capacity only, and not on behalf of any client or colleague.

Kindly consider the following issues before finalizing the proposed revisions to Regulation Z:

1. Please clarify **12 CFR Section 226.17(d)** and its accompanying Comment 2, so that application, post-application and pre-consummation disclosures (and all post-consummation disclosures provided pursuant to 12 CFR Section 226.20(c) through (e)) may expressly be provided to one single co-applicant or co-obligor, even if the transaction is determined to be rescindable. The creditor will not necessarily know whether a transaction is rescindable until the loan application has been underwritten and provisionally approved, and further until a title search has been done (confirming the identities of the owners of record of the real property proposed to be mortgaged). The title search may in some instances not be done until after a consumer (who may or may not have a legal ownership interest in the property proposed to be mortgaged) has accepted the creditor's provisional loan approval or loan commitment. In addition, whether a refinancing transaction is rescindable may depend on whether the new refinancing creditor was also the original creditor on the loan to be refinanced – information that typically would not be known within the first few days after an application has been received.

It is more important for "final" as opposed to estimated (or generic) disclosures to be provided to each individual with the right to rescind, since the decision concerning whether to rescind would presumably be made on the basis of "final" disclosures (and only after the transaction in question has been consummated). Early estimated disclosures are less useful in the rescission decisioning process, particularly if the interest rate has not yet been locked in (and/or the consumer has not yet decided which loan program best suits the consumer's needs), the lender is still waiting on an appraisal, and other variables pertinent to the final loan terms may still be outstanding (often including the exact principal amount to be borrowed, since this amount may depend on the total dollar amount of closing-related fees to be financed as well as the exact pay-off amounts due on loans being refinanced with the proceeds of the new loan transaction).

This clarification would be consistent with the current Official Staff Commentary to Section 226.17(d). The Commentary to Section 226.17(d) only specifically references the variable rate disclosures required to be provided pursuant to Section 226.19(b) in advance of consummation, and does not mention other required pre-consummation disclosures, because this Commentary predates the Mortgage Disclosure Improvement Act of 2008 and has not been updated to reflect new required pre-consummation disclosures.

This clarification also would be consistent with 15 USC Section 1640(a), which does not provide for any automatic civil penalty for a violation of 15 USC Section 1638(b)(2)(A), (B), (C)(i), or (D). This would also be consistent with HUD's RESPA regulations (which do not require each co-applicant to receive a good faith estimate or related RESPA disclosures). This would also be consistent with 12 CFR Section 226.5(d), which specifies that in rescindable open-end credit transactions, only the initial account-opening disclosures required by Section 226.6 and the notice of right to cancel need to be given to each consumer with the right to rescind – other application-related and pre-consummation open-end credit disclosures (including disclosures set forth in 12 CFR Section 226.5b) and also post-consummation change in terms disclosures and open-end credit periodic statements only need to be given to a single individual consumer who will be (or is) primarily liable on the account.

2. On a matter directly related to item 1. above, **footnote 48** to **12 CFR Section 226.23(a)(3)** should be revised and clarified, by adding a cross-reference to the appropriate new subsections in Section 226.38(b) and (e) immediately after the words "the required disclosures" (in part so that it is clear estimated and pre-consummation disclosures provided pursuant to Section 226.19 are not "material disclosures" for purposes of Section 226.23). Footnote 48 will also need to be conformed to the final version of specific disclosures required by Section 226.38(b) and (e). (For example, the Board is proposing modifying the current requirement that the total estimated "finance charge" be disclosed, and is proposing changes to the current payment schedule disclosure requirement – these types of modifications will indirectly affect footnote 48.)

In addition, the Commentary to Section 226.23(a)(3) should be revised, to clarify that the "material disclosures" listed in footnote 48 are not required to appear with the headings or graphs, or in the format, required by Section 226.38(b) or (e). The focus of footnote 48 should be on whether the consumer has been "inform[ed]" (see existing Comment 2 to Section 226.23(a)(3)), not on whether all of the technical requirements of Section 226.38(b) or (e) have been met.

3. The proposed "all in" approach to the closed-end Annual Percentage Rate for transactions secured by real property or a dwelling will further exacerbate the current disconnect between the Annual Percentage Rate required to be disclosed in connection with closed-end and open-end credit, and could further tend to encourage mortgage lenders to offer (and/or could tend to encourage consumers to request) open-end mortgage products (many of which allow interest-only payments during the first few years the account is open) instead of closed-end mortgage products (including closed-end amortizing mortgage products).

In addition, the proposed "all in" approach for closed-end credit secured by real property or a dwelling could make it more difficult for a consumer to compare effective Annual Percentage Rates on closed-end credit products that differ largely with respect to the nature of the collateral securing repayment of the products (with the nature of the collateral also indirectly influencing the term of the closed-end consumer credit products that might be under consideration). The disconnect between the Annual Percentage Rate on a mortgage-secured loan and a non-mortgage secured loan could be further exacerbated if voluntary (optional) credit insurance and debt cancellation fees are excludable only from the Annual Percentage Rate of a non-mortgage loan.

Unsecured closed-end credit (and closed-end credit secured by depreciating personal property, such as motor vehicles) might have fewer prepaid finance charges and other fees assessed in connection with the application or consummation of the credit transaction, in comparison to closed-end mortgage credit, but will also tend to have shorter maturities (which in turn tends to magnify the impact on the Annual Percentage Rate of prepaid finance charges assessed at or before closing). Unsecured closed-end credit (and closed-end credit secured by depreciating personal property) may also have relatively fewer refinancing opportunities (when compared to longer term mortgage-secured credit). A consumer's ability to make educated choices among various types of closed-end credit products will be further complicated if the formula for the Annual Percentage Rate differs depending on the type of collateral security required by the creditor.

Mortgage-secured closed-end credit often has scheduled maturities that are significantly longer than the actual maturity (because mortgage-secured closed-end credit is often refinanced or paid off early, ahead of schedule), and the impact on the Annual Percentage Rate of prepaid finance charges and other fees imposed in connection with application and consummation may be somewhat diluted, since the Annual Percentage Rate is calculated on the assumption that the credit transaction will be repaid according to the contractually required payment schedule. Significantly, however, many mortgage-related application fees and closing costs (such as credit report and appraisal fees, property inspection fees, document preparation fees, recording fees, and title search fees) do not vary according to the dollar amount of credit requested. Adding fees that are presently exempted by 12 CFR Section 226.4(c)(7) to a mortgage loan's prepaid finance charge will therefore have a larger impact on the Annual Percentage Rate for smaller dollar mortgage loans, by causing the Annual Percentage Rate to be higher on lower dollar mortgage loans than on otherwise identical higher dollar mortgage loans (which could have the unintended consequence of encouraging some consumers to borrow more money, not less, against the security of their homes).

The Federal Reserve Board has apparently determined that disclosure of an "effective" or historical APR on periodic statements pursuant to 12 CFR Section 226.7 is of little or no benefit to open-end credit consumers.[1] In addition, for closed-end student loans subject to 12 CFR Section 226.47, the Board has apparently determined that the simple annual interest rate is at least as important to

[1] "Consumer testing conducted on credit card disclosures in relation to the January 2009 Regulation Z Rule shows that consumers find the current disclosure of an APR that combines rates and fees to be confusing. Based on this consumer testing, the Board believes that consumers are likely confused by the effective APR disclosure on HELOC accounts." (See 74 Fed. Reg. at 43509 (August 26, 2009).)

borrowers as the Annual Percentage Rate. The closed-end Annual Percentage Rate on a longer-term residential mortgage transaction is an especially difficult concept for most consumers to grasp – it presumes (for example) that the loan will not be prepaid, and also presumes (for loans with variable rate features) that the value of the index used for future rate adjustments will not vary – presumptions that generally do not reflect past experience or the creditor's or consumer's legitimate present expectations. It is unclear whether, for closed-end residential mortgage loans, disclosure of an "all in" Annual Percentage Rate would be of greater benefit to consumers than the current method for calculating the closed-end Annual Percentage Rate for mortgage and non-mortgage transactions. It would likely be confusing to consumers to create two different Annual Percentage Rate calculation rules that depend solely on the type of collateral that will be used to secure repayment of closed-end credit. It is also unclear whether any consumer benefit from an "all in" closed-end Annual Percentage Rate would be sufficient to outweigh the costs to creditors of reprogramming their Annual Percentage Rate and related calculation devices for a subgroup of closed-end loans.

Under the proposed "all in" approach, once consumers realize that they are not able to compare "apples to apples" when they consider their financing options (for instance, because the Annual Percentage Rate formulas for open-end credit and for closed-end credit not secured by real property or a dwelling may often result in Annual Percentage Rates that appear to be significantly lower than the Annual Percentage Rates for closed-end mortgage loans solely because the latter APR includes certain fees that the other APRs exclude), they may mentally further discount the importance of the APR, not just for closed-end mortgage loans, but potentially for other types of closed-end and open-end consumer credit as well. This does not appear to be a desired result from a public policy or consumer protection standpoint.

If the desired end result is to focus a mortgage loan applicant's attention more on closing costs that fall within the scope of current 12 CFR Section 226.4(c)(7), one might perhaps wait to see whether the revised RESPA good faith estimate disclosures and related substantive requirements (effective on January 1, 2010) will have this desired effect, before modifying the definition of "finance charge" in Regulation Z. (An alternative, less drastic approach to the "all in" Annual Percentage Rate might be to selectively remove the finance charge exclusion for one or two specific items presently included within 12 CFR Section 226.4(c)(7), although a cost-benefit analysis of the computer programming required to implement such a change should first be undertaken.)

4. On a related matter: The finance charge exclusion in **12 CFR Section 226.4(c)(7)(v)** should continue to apply to closed-end mortgage-secured consumer credit transactions. For example, if a consumer is required to pay property insurance premiums or property taxes into escrow, this amount should be excludable from the finance charge.

(a) Specifically with respect to property insurance premiums - the Board has proposed continuing the 12 CFR Section 226.4(d)(2) finance charge exclusion for mortgage-secured closed-end credit transactions. The fact that a creditor might require an escrow for property insurance premiums should not transform such premiums into finance charges or make such premiums ineligible for the finance charge exclusion provided by Section 226.4(d)(2). We should be encouraging consumers to save gradually in order to be able to make property insurance premium payments as they come due. 12 CFR Section 226.35(b) requires some creditors to escrow for property insurance premiums. Federal flood insurance regulations also require certain residential mortgage creditors to escrow for flood insurance premiums, if the mortgaged residential property is in a high risk flood area and the borrower is being required to pay any fees or charges into escrow. Federal law thus implicitly considers escrowing for property insurance premiums to be beneficial to both borrowers and lenders. Treating amounts paid into escrow for property insurance as finance charges simply because they are paid into escrow does not seem to benefit consumers.

(b) Concerning property taxes: Proposed Comment 4(g)-3 refers to certain charges that would be payable by a consumer in a comparable cash transaction. Proposed Comment 4(a)-6 would effectively limit the scope of Comment 4(g)-3 to purchase-money transactions. A more accurate economic approach to property taxes and similar property-related assessments would be to take the position that, as an owner of the property, the owner has an independent legal obligation (arising from the owner's status as a property owner, regardless of how that ownership status was acquired) to pay property taxes and other assessments imposed on the property. (The payment obligation could arise as a matter of law, with respect to governmentally-imposed taxes and assessments, or as a matter of contract, with respect to assessments imposed by condominium or cooperative associations.) A creditor's decision to require an escrow for such property taxes and assessments should not transform those taxes and assessments into finance charges, whether the credit transaction is purchase-money or not. Economically, an owner could reasonably be expected to have a plan to set aside sufficient savings over time to cover periodic property taxes and assessments as they come due – a creditor's escrow requirement only formalizes a savings plan the property owner likely would have to follow in any case to be able to pay property taxes and assessments when they come due. Furthermore, property tax escrows are already substantively regulated by RESPA and other applicable laws, and may be required by 12 CFR Section 226.35(b) and other applicable laws. Escrows for property taxes thus are not treated as anti-consumer loan features in Regulation Z, and payments made into escrow for property taxes should not be considered finance charges simply because the transaction (a) was not a purchase-money transaction or (b) was secured by real property or a dwelling.

(The discussion in the preceding paragraph also applies to escrows for property insurance premiums, in view of the Board's proposal to continue the 12 CFR Section 226.4(d)(2) finance charge exclusion for mortgage-secured closed-end credit transactions.)

5. Current Comment 6(a)(2)-2.x. implicitly stands for the proposition that optional, voluntary charges imposed by creditors, their assignees, or third parties (such as account servicers) for making individual payments by telephone or Internet are not finance charges. Proposed Comment 6(a)(3)(ii)-2.iii. (part of the Board's home equity credit line proposal, Docket No. R-1367) would, however, provide that such fees are "imposed as part of" a home equity credit line for purposes of proposed Section 226.6(a)(3) (which in turn muddies the waters with respect to whether such fees would be imposed directly or indirectly by a creditor on a consumer "as an incident to" an extension of closed-end credit for purposes of 12 CFR Section 226.4).

These types of telephone and Internet payment fees are perhaps more accurately characterized as fees imposed in order to use a creditor's (or assignee's or servicer's) telephone or Internet expedited payment service. (This type of service could potentially be made available by a creditor, assignee, or account servicer to consumers who are interested in making closed-end or open-end credit payments, payments on consumer leases subject to Regulation M, and other transactions, potentially including credit transactions that fall outside the scope of Regulation Z.) This type of fee often arises only post-closing (in some cases pursuant to unrelated post-closing arrangements that might be made by the original creditor or an assignee of the loan with a third party servicer). This type of expedited payment service also could potentially be implemented by a creditor, assignee, or account servicer initially on a trial basis for a subgroup of consumers, to try to gauge consumer demand and to get a better sense of the costs and benefits associated with this type of service. As long as the consumer is allowed to mail payments via regular first class U.S. mail, a consumer's decision to (for example) go directly to a third party money transmitter or use a depository bank's online bill payment service to transmit a payment should be considered a voluntary decision by the consumer to incur a payment-related charge (no different from a consumer's own case-by-case decision to pay extra for U.S. Postal Service Express Mail or other commercial overnight delivery of a payment check, or to incur a telephone or Internet expedited payment fee imposed by a creditor or account servicer).

If these types of telephone and Internet payment fees are only voluntarily incurred by the consumer (at the consumer's election exercised from time to time post-consummation), they should not be considered part of a closed-end credit transaction's "finance charge," even though these fees might technically be incurred in connection with a closed-end credit (or lease or other) transaction. If payment of the fee is only contractually required if and to the extent the consumer chooses to avail himself or herself of the telephone or Internet payment service (with use of the service being strictly optional), the fee should be excludable from 12 CFR Section 226.4.

6. On a related matter, it would be very useful to clarify in **proposed Section 226.6(a)(3)(ii)** (part of related rulemaking in Docket No. R-1367) and its accompanying Official Staff Commentary that fees falling within subsections (B) through (F) of proposed Section 226.6(a)(3)(ii) are not "finance charges" (except to the extent proposed Section 226.4(g) specifically requires otherwise). The interplay between proposed Section 226.6(a)(3)(ii) and Section 226.4 should be carefully considered, since closed-end creditors (as well as consumer lawyers and judges) may wish to continue to draw inferences from Section 226.6 concerning what types of fees are properly considered finance charges and what types of fees may be considered "other charges" (not finance charges) under Regulation Z.

7. The Board has asked for comment concerning whether Regulation Z should include a requirement that disclosures be translated into languages other than English in connection with certain (or all) consumer credit transactions. This raises interesting public policy issues, including the following:

(a) For a relatively simple unsecured consumer credit transaction (whether open-end or closed-end), that does not include any security agreement, pledge agreement, or mortgage, arguably the most important document from the consumer's standpoint remains the actual consumer credit contract itself. Applicable state law would generally govern the enforceability of that contract and whether the creditor is required to provide a translation of that contract (subject to a possible exception for transactions that are subject to the Federal Trade Commission's home solicitation sales rule, 16 CFR Part 429, or an equivalent state statute, requiring home solicitation sales contracts to be "in the same language … as that principally used in the oral sales presentation"). The common law of contracts generally requires a mutual agreement and understanding – thus, if one party truly failed to comprehend a contract due to a language barrier, under circumstances where the other party to the contract appeared to have taken unfair advantage of the language barrier, courts may refuse to enforce the contract. (See, e.g., More v. Ohio Pub. Ser. Co., 1926 Ohio Misc. LEXIS 909, 4 Ohio L. Abs. 749 (Oh. App. 1926).)

Translating terms used pursuant to 12 CFR Section 226.18 (or proposed new Section 226.38), such as "Annual Percentage Rate," "Finance Charge," "Total [of] Payments," and so forth, would not by itself assist the consumer in understanding the full scope of the consumer's contractual obligations, particularly since Regulation Z closed-end credit disclosures do not elaborate on the potentially significant consequences of nonpayment or other events of default, and do not summarize what constitutes a default or grounds for accelerating repayment of the credit transaction. Regulation Z closed-end credit disclosures also do not disclose such things as default interest rates or describe when such interest rates may be triggered. Instead, 12 CFR Section 226.18(p) (and proposed Section 226.38(j)(5)) instructs consumers to read their contract documents for important additional information about default, acceleration, and other significant matters (including prepayment penalties).

There is also a body of case law indicating that a consumer has an independent legal obligation to try to understand the terms of a contract before signing it. (See, e.g., Morales v. Sun Constructors, 541 F.3d 218 (3rd Cir. 2008), holding that a Spanish-speaking welder residing in the U.S. Virgin Islands was bound by the terms of an English language employment contract he signed, when he had the opportunity to ask a bi-lingual fellow employee for a translation before he signed the contract, and also could have taken a copy of the contract home to obtain a translation, but did not.)

(b) In purchase-money transactions, arguably the more important contract document that may merit translation is the actual purchase contract itself (not the financing contract), since it is the purchase contract that essentially obligates the purchaser to seek purchase-money financing (and breach of the purchase contract by the purchaser could result in forfeiture of a significant downpayment or deposit). In other words, the negotiations leading up to the actual purchase contract, and the purchase contract itself, are arguably more critical than the subsequent Truth in Lending disclosures associated with the related purchase-money financing contract. Regulation Z disclosures are not designed to, and would not, help a consumer understand the terms of his or her purchase contract.

(c) For mortgage transactions that are closed with the assistance of a settlement agent or an employee or representative of the creditor, particularly if a transfer of title to real property is involved,[2] concerns about the enforceability of the deed(s) transferring title to the property will likely encourage the settlement agent and/or real estate agent or loan originator expecting to earn a commission or fee on the underlying transaction to see to it that affected consumers at the closing understand the transaction and the documents they are signing. See, e.g., Cheshire Mortgage v. Montes, 223 Conn. 80, 612 A.2d 1130 (Conn. 1992), where the Connecticut Supreme Court upheld the trial court's finding that the defendant borrowers understood the terms of their English language mortgage loan contract documents although they had not obtained or received a Spanish language translation of those documents: "… neither defendant had any difficulty with the English language, in understanding any questions put to them by counsel or the court, or in understanding the judicial proceedings. The court

[2] It may be useful to note in this regard that certain states' laws treat mortgage deeds as the transfer of legal title from the mortgagor to the mortgagee. For example, in Connecticut, a mortgage deed is considered the conveyance of legal title from the mortgagor to the mortgagee, with the mortgagor retaining equitable title and the right to redeem legal title from the mortgagee upon payment in full of the mortgage debt and fulfillment of the other terms and conditions of the mortgage. See, e.g., State v. Hahn, 207 Conn. 555, 541 A.2d 499 (1988); Conference Center Ltd. v. TRC, 189 Conn. 212, 455 A.2d 857 (1983). For similar Massachusetts case law (by way of further example), see Cooperstein v. Bogas, 317 Mass. 341, 58 N.E.2d 131 (1944).

also found that the defendants had entered into a prior mortgage transaction, namely, their first mortgage with People's Bank. The court further found that the defendants were 'intelligent and energetic' persons, and that, having lived in the mainland United States for more than twenty years, they understood its judicial, 'legal and financial systems.' Finally, the court found that the defendants defaulted on the mortgage, not because they did not understand their obligations thereunder or because their income while living together was insufficient to support the mortgage payments, but because the breakdown of their marriage subsequent to the mortgage closing impaired their financial situation. [...] *Both defendants testified that the attorney closing the loan fully explained the documents to them.* [...] Moreover, although *the defendants had a right to be represented by their own counsel, which was fully explained to them by the plaintiff's attorney, the defendants signed a form waiving that right.*" (emphasis added)

(d) A quick online search of the state and federal case law databases within LexisNexis® revealed very few decisions revolving around a creditor's failure to provide foreign language disclosures. One case involving prepaid telephone calling cards refers to proposed federal legislation that would have required certain calling card disclosures to be provided in a foreign language if the related marketing of the card is in a foreign language. That case also notes that apparently only two states presently require certain calling card-related disclosures to be provided in a foreign language if the card is marketed in that foreign language. (See Ramirez v. Dollar Phone Corp., 2009 U.S. Dist. LEXIS 104876 (E.D.N.Y., November 10, 2009).) Martinez v. Freedom Mortg. Team, 527 F. Supp. 2d 827 (N.D. Ill. 2007) alludes to an Illinois statute (815 ILCS 505/2N) requiring a retailer acting as a consumer's interpreter to obtain a signed consent form from a consumer if the retailer (or its employee) uses a language other than English to conduct a retail transaction or negotiations related to a retail transaction that results in a written contract.[3] Several reported cases arise under Cal. Civil Code Section 1632 (California's Foreign Language Contract Act).

Translation of financial terms into foreign languages is not always as simple as might appear at first blush. To give one example – the specific terminology, vocabulary and written characters used by those who learned Chinese in Taiwan or in mainland China is not the same (and the terminology, vocabulary and written characters used and understood by recent Chinese-speaking immigrants to the United States may differ from the terminology, vocabulary and written characters used and understood by Chinese-speaking immigrants who came to the United States several decades ago). As another example, similar issues would likely arise with Spanish terminology and vocabulary used in different Spanish-speaking countries.

In view of the underlying contract enforceability issues that may arise if a consumer enters into a contract in a language other than his or her native language, and considering the relative paucity of case law (and state laws) concerning enforceability of English language contracts, it appears that this foreign language contract issue has not resulted in significant or widespread anti-consumer consequences. It therefore seems preferable to continue to leave the issue of foreign language translations (whether of certain disclosures or of certain types of contracts) to the states and to Congress.

[3] This statute also allows for the possibility that the consumer might use an interpreter other than the retailer or an employee of the retailer (in which case both the consumer and the consumer's interpreter are required to sign certain forms).

8. The U.S. Department of Housing and Urban Development (HUD) has indicated in an FAQ posted on its web site that creditors are not required to disclose the possibility of a prepayment penalty in connection with Regulation Z disclosures provided for FHA loans using a monthly interest accrual method that does not always pro rate for a fraction of a month if a loan is prepaid in full in mid-month. The Federal Reserve Board wrote a letter to Secretary Donovan at HUD dated September 29, 2009, wherein the Board "stated to HUD that lenders which use the monthly interest accrual method required by FHA '…would not be required to treat the interest charged from the date of prepayment until the next installment due date as a prepayment penalty for any purpose under Regulation Z'" (quoting from HUD's FAQ).

This recent Federal Reserve Board advice could potentially be regarded as somewhat in conflict with the existing Commentary to Section 226.18(k), including the following proposed example of a prepayment penalty in the Commentary: "Charges determined by treating the loan balance as outstanding for a period after prepayment in full and applying the interest rate to such 'balance.'" (quoting from proposed Comment 1.i. to Section 226.18(k)(1))

(a) The substance of the Board's recent advice to HUD should be codified in the Commentary to make this advice easier to locate. In addition, rather than create a special FHA (or mortgage loan) exception to the general rule about disclosing the possibility of a prepayment penalty if interest could accrue to the end of the month although prepayment in full occurs in mid-month, the Board's current position with respect to FHA loans as articulated in its September 29, 2009 letter to Secretary Donovan should apply to all closed-end credit transactions subject to Subparts C and/or E of Regulation Z, regardless of whether they are secured by any personal or real property (and regardless of whether any security interest is taken in a "dwelling"). This would facilitate a consumer's comparison of competing loan products and would also greatly simplify creditor compliance with Section 226.18(k)(1) (and proposed Section 226.38).

(b) It is not uncommon for closed-end creditors to use a monthly actuarial method of accruing interest, and to give consumers the benefit of the doubt when monthly payments are received a few days late. In such cases, using a common monthly actuarial method of accruing interest, a late payment would often be applied to the same dollar amount of accrued interest as a payment made on time or a few days early. Similarly, a prepayment in full that occurs a few days after or before a scheduled payment due date might also be subject to the same monthly interest accrual calculation as if the prepayment occurred on the scheduled payment due date.

In addition, some state laws may allow creditors to treat a period of 15 days (or more) as the equivalent of a full month for interest accrual purposes, so that a prepayment in full that occurs 14 days (or less) before a regularly scheduled monthly payment due date could be treated the same (for interest accrual purposes) as a prepayment in full that occurred on the scheduled payment due date.

Based on the Board's September 29, 2009 letter to Secretary Donovan, it appears that neither of the scenarios outlined above would need to be considered prepayment penalties for purposes of 12 CFR Section 226.18(k)(1) or proposed Sections 226.38(a)(5) and (d)(1). It would be extremely helpful to closed-end creditors if these prepayment penalty issues were clarified in expanded Commentary to Section 226.18(k)(1) and proposed Sections 226.38(a)(5) and (d)(1).

Thank you very much for the opportunity to present these comments. Please do not hesitate to contact me at (203) 776-1911 during regular business hours (Eastern Time) if you have any questions about any of the matters discussed in this letter or would like any further information.

Sincerely,
/s/ *Elizabeth C. Yen*
Elizabeth C. Yen
(admitted in Connecticut only)